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ENSURING OUTSOURCED DIGITAL WORK IS DECENT WORK: THE DRAFT EU DIRECTIVE ON CORPORATE SUSTAINABILITY DUE DILIGENCE AND THE ALTERNATIVES

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What's next...



# What I will cover



1. Decent work
2. Proposed EU Directive on Corporate Sustainability Due Diligence
3. Alternatives

# Decent work – a broadly accepted concept



## 8 DECENT WORK AND ECONOMIC GROWTH

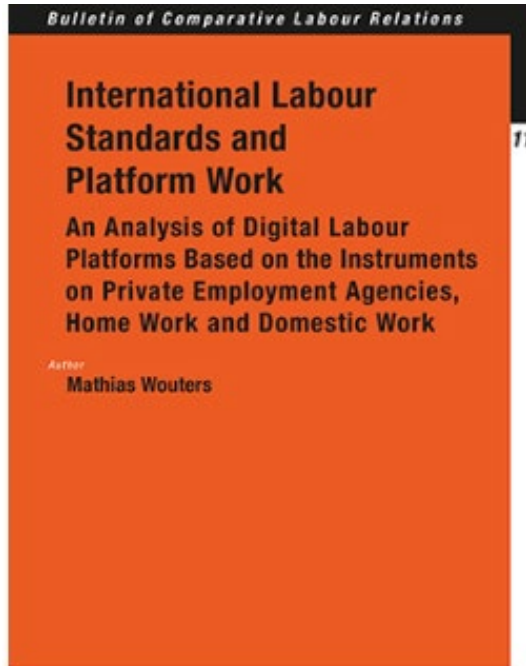


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Ensuring respect for the fundamental principles and rights at work for all workers engaged in digital and platform work. Since the adoption of the ILO Declaration on Fundamental Principles and Rights at Work in 1998, Member States, workers' and employers' organizations, businesses and other stakeholders have repeatedly expressed their recognition of the universal application and relevance of the fundamental principles and rights at work. The universality of these rights is recognised in instruments such as the UNGPs, the ILO Tripartite Declaration and the OECD Guidelines.



# Challenges to Decent Work posed by platform work:



Dominance of the **intermediary** – operators reserve the right to implement unilateral changes.

**Transnational work** arrangements – cross border working relationships.

**Distribution of responsibility** across parties – no clear ‘employer’ or ‘employer-like’ entity.

# Part 2

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Proposed EU Directive on  
Corporate Sustainability Due  
Diligence (CCDD)

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What's next...



# Proposed EU Directive on Corporate Sustainability Due Diligence (CCDD)



Addresses decent work:

“Certain EU companies have been associated with adverse human rights and environmental impacts, including in their value chains. Adverse impacts include, in particular, human rights issues such as forced labour, child labour, inadequate workplace health and safety, exploitation of workers . . .”

No explicit reference to digital or platform work. It is covered but not well.



# How CCDD works – human rights due diligence

Obligation for Member States to ensure that **companies** take appropriate measures:

To identify (Article 6)

To prevent (Article 7)

To take appropriate measure to bring an end to (Article 6)



Actual or potential adverse human rights and environmental impacts in their own operations, in their subsidiaries and at the level of their established direct or indirect business relationships in their value chain.



# How CCDD works – complaints



Obligation for Member States to ensure that **companies** provide for the possibility to submit complaints against the company (Article 9)



Submit substantiated concerns to a **supervisory authority** (Article 19)



With sanctions applicable to infringements of national provisions that are effective, dissuasive and proportionate (Article 20).

Combination of French and German legislative approaches





# CCDD shortcomings

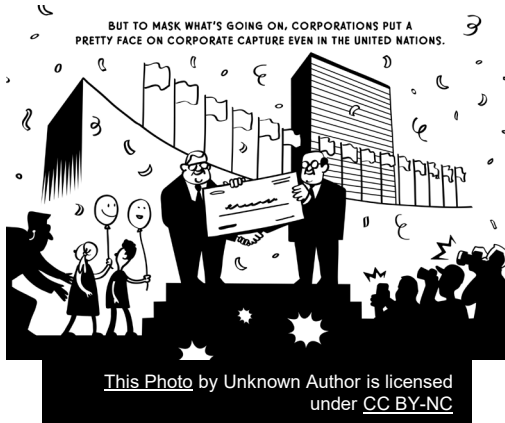
Unlikely to be reports concerning platform work – unless specific guidance or industry schemes developed.

No support of collective rights or cross-value chain collective bargaining.

Difficult to make complaints – as evidenced by lack of successful claims under French and German legislation.

Because EU based, does not empower nations that work outsourced to.

Has been charged with neo-colonialism and extending corporate agency.



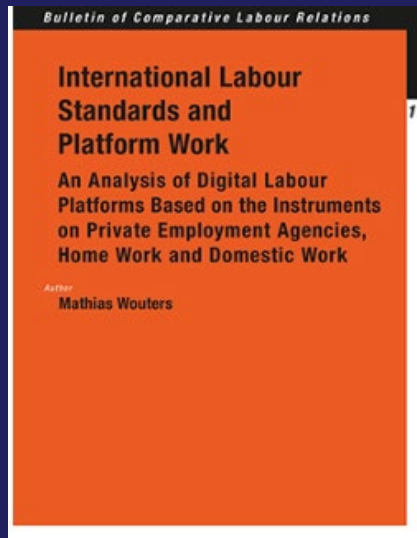
# Part 2

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Alternatives: UN and ILO  
Instruments

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What's next...

# Shortcomings of existing ILO Conventions



“ILO instruments insufficiently acknowledge how dominant contemporary intermediaries, among others, have become due to changes in the labour market”: Mathias Wouters



# ILO or UN instrument



Currently a Draft UN Business and Human Rights Treaty with stronger liability provisions than Proposed EU Directive.



ILO Governing body at 2025 Conference will discuss standards related to decent work on the platform economy.



300 professors, lecturers, and researchers launched a Global Manifesto for a Fairer Platform Economy in October 2022 calling on ILO to develop a Convention.



# ILO or UN instrument



347th session in March 2023, the Governing Body approved a comprehensive new ILO strategy on decent work in supply chains



Global Union Movement will table a draft Convention on Decent Work in Global Supply Chains



# Expansive role for ILO: Facilitation of cross-border social dialogue and collective bargaining



Facilitating global collective bargaining framework agreements – Art 28a



Facilitating legally binding and enforceable cross-border agreements – Art 28b



Building the legal architecture with Members for enforceable cross-border agreements – Art 28c



Monitoring, mediation, and dispute settlement – Art 28d&h



Developing model dispute resolution procedures – Art 28e



Establishing arbitration panels – Art 28f



Certification and licensing of platform work

# A Global Certification System



Each country should establish an effective system for the inspection and certification of platform work conditions, ensuring that the working conditions of platform workers who:

- established or situated in its territory.
- or who habitually carry out their work in its territory.

A digital labour platform certification regarding platform work conditions, complemented by a declaration of platform work compliance, would constitute evidence that the platform work organised by a digital labour platform has been duly inspected by the Member on whose territory the digital labour platform is established or situated and that the decent working conditions of the platform workers have been met to the extent so certified.



# Implementation and inspection

- Each country should be responsible for ensuring implementation of its obligations under this instrument concerning digital platforms
  - established or situated in its territory.
  - or who habitually carry out their work in its territory.





# Choice of law



- Platform work should be governed by the law of the country where, or from where, the platform worker habitually carries out their work.
- The term law includes, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred.
- Should apply without depriving any platform worker of the protection afforded to them by more favourable provisions laid down in applicable national laws, regulations or collective agreements.